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# Eclipsing Justice—a Foundational Compromise within Philosophy of Argument

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**ABSTRACT:** Infusing logic with new rhetoric, dialogical pragmatics, and emphasizing argument context revolutionized the practice of logic. Critiquing oppressive practices and promoting justice, argumentationists empower participants to mediate their own argumentative situations. Against relativism to rescue the normative utility of good argument, argumentationists invoke the universal audience. Still, context-concerns eclipse its independence or resurrect rationalist absolutism. This vacillation imposes an external mediation that subverts establishing theoretical ground for promoting an empowering culture of justice.

**KEYWORDS:** appropriative alienation, audience adherence, bracketing, dissemblance, external mediation, pragmatics, relativism, social infrastructure, thing-itself, universal audience

## 0. INVOCATION—A CALL TO JUSTICE: THROWING OFF THE SHACKLES OF ABSOLUTISM

In a practical sense we might well trace the origins of the modern argumentation movement to the 1960s in the US during a time of increasing criticism of the domestic and international social, political, and economic practices of those in leadership. As this criticism found expression among the youth, especially those drawn into the student anti-war and civil rights movements, they found the content of their educations seriously deficient in respect of its relevance to assessing values and meaningful lived-experience. One challenge to established learning charged that formal logic is irrelevant.

In a more theoretical sense, the seeds for the intellectual maturity of the argumentation movement had already been sown and nurtured in the works of Ch. Perelman & L. Olbrechts-Tyteca, S. Toulmin, and C.L. Hamblin. Their seminal works were *manifestos* invoking a progressive response to oppressive canons of ‘good reasoning’ with especially salient links to concerns of justice. Perelman writes that “we combat uncompromising and irreducible philosophical oppositions presented by all kinds of absolutism” (1969, p. 510); he complements this pronouncement

that [argument] strength is appraised by application of the rule of justice: that which was capable of convincing in a specific situation will appear to be convincing in a similar or analogous situation. (1969, p. 464)

The new rhetoric “constitutes a *break with a concept of reason and reasoning due to Descartes* which has set its mark on Western philosophy for the last three centuries” (1969, p. 1). Deliberation and argumentation are opposed to necessity and self-evidence—no one deliberates and argues what is necessary or self-evident.

Take away the guarantee which God gives to self-evidence and, suddenly, all thought becomes human and fallible, and no longer sheltered from controversy. [...] But lacking self-evidence that can be imposed on everyone, a hypothesis, to be accepted, must be supported by good reasons, recognized as such by other people, members of the same scientific community. The status of knowledge thus ceases to be impersonal because every scientific thought becomes a human one, i.e., fallible, situated in and subjected to controversy. (1982, p. 159)

Toulmin provides a social history of logic that locates a division between reason and rationality in the Peace of Westphalia that produced absolute sovereignty, established religion, and logical demonstration, each sharing two common features:

[1] all of them operated top-down, and gave power to oligarchies — political, ecclesiastical, or academic — that supported one another [...] [2] they formed a single [ideological] package” (2001, p. 156).

He also cautioned against any God’s-eye-view (1958, pp. 184-185).

The Westphalian Settlement was, then, a poisoned chalice: intellectual dogmatism, political chauvinism, and sectarian religion formed a blend whose influence lasted into the twentieth century (158), [the outlines of which] day by day and year by year ... have thus been progressively eroded (161). As in politics, tolerance and democracy are winning out over elitism in methodology, and over imperialism in the philosophy of science. To that extent, the imbalance in European ideas about Rationality and Reasonableness shows healthy signs of correcting itself. (2001, p. 167).

C.L. Hamblin declared that

what is, above all, necessary is to dethrone deduction from its supposed pre-eminent position as a provider of certainty [...] simply because we sometimes cheerfully and properly prefer other arguments against it” (1993, p. 250).

So long as it is the logic of practice that is being discussed, it is important to relate the concepts of truth, validity, and knowledge to dialectical concepts in the right way. [...] In the limiting case in which one person constructs an argument for his own edification [...] his own acceptance of premisses and inference are all that can matter *to him*; and to apply alethic criteria to the argument is surreptitiously to bring in the question of *our own* acceptance of it. When there are two or more parties to be considered, an argument may be acceptable in different degrees to different ones or groups, and a dialectical appraisal can be conducted on a different basis according to which party or group one has in mind; but again, if we try to step outside and adjudicate, we have no basis other than *our own* on which to do so. Truth and validity are onlookers’ concepts and presuppose a God’s eye-view of the arena. [...] [onlookers might intervene but] become simply another participant in an enlarged dialectical situation and that the words ‘true’ and ‘valid’ have become,

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for [the participant] too, empty stylistic excrescences. To another onlooker, my statement that so-and-so is true is simply a statement of what I accept. (1993, p. 242)

The call to dethrone deduction was simultaneously a call to cultivate a culture of justice within an arena of an empowering democratic discourse.

Our concern asks whether these new logicians, taking joy in throwing off the shackles of an old idealist metaphysic, were then only to revel in the newfound freedom of pure subjectivity that Hegel severely criticized as embracing a Kantian notion that nothing external has authority.

This philosophy made an end of the metaphysic of the understanding as an objective dogmatism, but in fact it merely transformed it into a subjective dogmatism, *i.e.* into a consciousness in which these same finite determinations of the understanding persist, and the question of what is true in and for itself has been abandoned. (*Lectures* iii, p. 427)

### 1. INTRODUCTION—AUDIENCE ADHERENCE AND THE SPECTER OF RELATIVISM

Infusing logic with new rhetoric (Perelman) and dialogical pragmatics (Hamblin), and emphasizing an argument's context (Toulmin) has revolutionized the study and practice of logic. This confluence of influences makes especially evident that argumentative deliberation is an integral part of dynamic lived-experience. This approach emphasizes the participant relativity of validity, inference, and cogency when premise acceptability replaces truth in an argument having as purpose to achieve audience adherence. This approach eschews the absolutist privilege invoked by Cartesian rationalism, which argumentationists view as an instrument of oppression. Thus, placing a premium on audience adherence and acceptability as marks of a good argument, philosophers of argument generally maintain the following principles:

- Arguing is preeminently a social and personal activity situationally embedded, always expressed in a natural language, and is thus replete with ambiguity and nuance and not abstract. Formal logic disregards the context relativity of argumentation and its concomitant norms of assessment.
- There are no clear demarcations between an arguer, an audience, an argument (a product), an argumentation (a process). Consequently, procedures for managing exchanges (dialectic) and an argument's presentation (rhetoric) are of special importance in argument evaluation. Formal logic obviates a concern with the process and pragmatics at the heart of the argumentative situation.
- The deductive model of a good argument does not well serve argument evaluation. An argument consists in assertions and statements made by human beings in an imperfect world, not in atemporal propositions. Formal logic is entirely too narrow just in its fixing propositions as platonic entities.
- Since arguing occurs in a natural language, soundness is neither a necessary nor a sufficient condition for a good argument—premise acceptability and inferential suitability trump truth and validity. Eschewing deliberation, formal logic obviates the human in arguing and renders itself irrelevant.

- An argument's cogency is participant- or audience-dependent and not an objective property inhering in an argument. Accordingly, argument assessment turns on premise relevance and their support sufficiency. This approach shifts attention from formal (oppressive) rationality, claiming universality, objectivity, absoluteness, to the (liberating) relativity of reasonableness within a given context.

Universally embedded in the many critiques by argumentationists of oppressive cultural practices and in their enduring desires to promote a culture of justice are explicit and implicit democratic affirmations to empower participants to mediate their own argumentative situations. We can extract a number of their foundational and guiding principles (Boger 2006, 2007).

- Argumentation opposes all kinds of philosophical absolutisms and promotes free and open rational deliberation in modern democratic, pluralistic society. Argumentation is *egalitarian*, opposing a top-down method of persuasion.
- Argumentation is associated with a notion of *reasonableness* that recognizes the relativity of diverse human experiences. Participants embrace, endorse, and cherish rationality, an especial human faculty.
- Argumentation recognizes that all thought is *human* thought, that knowledge is not impersonal but personal. Argumentation encourages *personal development*.
- An absolute precondition of argumentative practice is the assumption of *good will*. Argumentation recognizes the personhood of the other; participants *respect* other minds and their beliefs.
- Argumentation, promoting *free exchange of ideas*, recognizes the necessity to regulate argumentative discussion by means of dialogical rules that result from the various wills of participants. Participant obligations and responsibilities to abide the rules arise from a *duty to respect* the person of the other.
- Argumentation promotes the values of *acting fairly*, justly, honestly, and sharing; acting so as not to take advantage of a situation unfairly for the benefit of the one and the harm of the other. Participants eschew the use of prejudice and thoughtlessness. Participants forswear the use of force, flattery, trickery, deception, baneful use of the informal fallacies and illicit dialogue shifts.
- Argumentative discussion aims *to change ignorance to knowledge*, prejudice into reasoned judgment, to promote human well-being—as much as these may be hoped for. This is especially important since knowledge and beliefs aim at practical implementations that affect the well-being of the community of human beings. Argumentation promotes *the idea of the human*.

Perhaps philosophy of argument is really a branch of ethics espousing a moral attitude.

Argumentation, then, is a social activity that occurs in a particular social/linguistic context, that has procedural rules governing discourse, that has a practical purpose to persuade or to justify, that uses various techniques in the process, and that has a particular

content. Moreover, just in its being thoroughly human and inextricably embedded in a specific time and place, argument evaluation would mistakenly make recourse to atemporal properties of truth and validity; instead, it must invoke principles of acceptability and reasonableness of inferential links. A good argument secures its audience's adherence.

However, many conscientious philosophers of argument, such as Trudy Govier, Ralph Johnson, and Christopher Tindale, recognize a *specter of relativism* to haunt argumentation theory. Moreover, they recognize that not resolving this matter satisfactorily has frustrated securing a common theoretical ground for a renewed culture of justice whose objective is the promotion and betterment of human beings.

To remedy this predicament and rescue the normative and evaluative utility of *good argument*, some philosophers have invoked the *universal audience*. However, two problems emerge.

1. Invoking *the* universal audience resurrects the object of disdain—Cartesian rationalism—it thus re-imposes the very absolutism argumentationists wish to obviate.
2. Adhering strictly to the contextual nature of an argument results in subverting the independence of the universal audience to render it *only another* audience—*whose* universal audience?

Consequently, these philosophers vacillate uncomfortably between (1) adhering to the particularity of argumentation while (2) invoking *the* universal audience to inform and mediate the notion of a *good argument* only then (3) to again encounter a particular audience. Notwithstanding good will, their vacillation inescapably re-introduces the external mediation they sought to overcome and subverts finding solid theoretical ground for promoting a culture of justice and genuine empowerment. Remaining adrift in pernicious relativism, they inadvertently eclipse their concerns with justice and empowerment by implicitly sanctioning the prevailing appropriative alienation embedded in the social infrastructure.

Our discussion returns to the problem of relativism to articulate the character of a failed attempt to dispel the specter of relativism. Hegel's discussion of the moral attitude in *Phenomenology of Mind* is especially helpful in this analysis.

## 2. SOME CONTEMPORARY ARGUMENTATIVE ISSUES

Given this orientation to the dynamics of argumentation, would a philosopher of argument think it possible to make a *good argument* for any of the following propositions among the general population in the US? Would audience adherence be forthcoming? These are some *non-trivial* issues that dot the contemporary landscape of controversies occupying the US citizenry.

- The Palestinian soldiers are not terrorists but in truth freedom fighters resisting the Israeli terror of occupation. In fact, the US ruling regimes employ terror, both domestically and internationally, to achieve their ends in the Middle East.

- Black Americans are long overdue reparations for past racist practices, practices that yet have a virulent persistence during contemporary times.
- Same-sex relationships are as natural as heterosexual relationships and same-sex marriages ought to be sanctioned in the US at the federal level as the law of the land.
- In the modern global economy, economic growth necessarily will result in natural and human catastrophes—only developing a sustainable global economy is rational.
- Global warming is a reality caused by human agency and not a natural cycle of the earth; and global warming is accelerated by capitalist economics whether regulated or unrestrained.
- The increase in recent acts of violence in Iraq by the so-called insurgents is not a result of their being emboldened by prospects of an American withdrawal of armed forces but is fueled by the principals of the Bush regime who stand to lose a great deal of money were peace to come to Iraq.
- Atheists are good human beings and ought to be appointed to prominent political positions in the US, just in their not falling afoul of the inescapable religious sectarianism that has caused so much human deprivation.
- Creationism is not science, and the continued dual assault on naturalistic science and the fact of evolution diminishes education in the US with a throw-back to mythopoeic explanation, contrary even to healthy market economics. Religion is necessarily anti-science because of its idealist metaphysics.
- GW Bush and his cronies committed high crimes and misdemeanors against the American people and ought to be prosecuted to the fullest extent of the law; this is especially the case in their promoting the use of torture.
- The North Koreans, as the Iranians, are correct to demand their sovereign national right to develop a nuclear arsenal within the rights of nations to self-determination according to the unanimity principle.

Perhaps we are not challenged to accept the truth of these propositions. Still, others might be, and here philosophers of argument recognize these and similar concerns to be troubling, just in their embracing a presumption of what justice entails while also holding that a good argument achieves audience adherence. They often have recourse to relying on the good will of a given audience somehow to overcome its parochialism to embrace justice through their self-recognition of falling short in reasonableness. Below we examine some problems within the discussions among philosophers of argument as they wrestle with reconciling the inescapable emergence of problematic relativism when embracing audience adherence.

### 3.0 TWO PROBLEMATIC OUTCOMES IN PHILOSOPHY OF ARGUMENT

Once the focus of argument evaluation turned on audience adherence, and here especially on premise acceptability and the context suitability of inferential links, it has been entirely natural that philosophers of argument veered toward argument management when they encountered the specter of nihilistic relativism. These two are correlates of one another. By obviating a concern to establish the truth or falsity of propositions and the

implication relationships among them in an argumentation, even if contextually situated, argumentationists have had to *bracket* the content of an argumentation in favor of assessing its pragmatics. In abandoning genuine concerns to establish knowledge, they have equally bracketed the natural and social worlds upon which both truth and validity rest.<sup>1</sup> Of course, once bracketing, or cancelling, the natural and social worlds, there is then no way to mediate opposing argumentations—there is no longer an objective ground, only the nothingness in thought of an absent thing-itself. A consequence of this is to develop two, and perhaps more problematic, formalisms:

1. the formalism of dialogical rules reminiscent of, even invoking, Kant's categorical imperative of pure duty; and
2. its necessarily resurrecting the very external mediation it wished to dethrone, now in the form of the universal audience, and in the process eclipsing its genuine concern to effect justice.

To help in this project toward remedying this trend in argumentation theory, we enlist Hegel's discussion of dissemblance in his *Phenomenology of Mind*.

### *3.1 An outcome of a principal concern with dialogical pragmatics*

Evaluating informal fallacies continues to occupy considerable attention among argumentationists. An important consequence from the start is recognizing the complexity of natural human reasoning and coming to appreciate the *context relativity* of cogency and inferential links, even of truth and falsity—whose truth? whose reason? Philosophers of argument have universally aimed to *materialize* logic to embrace the *concrete given-ness* of an argument and to throw off the abstract and oppressive formalism of Cartesian rationalism. However, moving in this direction has amounted to suspending judgments about objective truth and falsity and about objective propositional implication relationships—these have become unknowable things-in-themselves beyond human apprehension without an objective ground for mediating knowledge of them. It is little wonder, then, that identifying an argument's purpose to rest in its gaining audience adherence, as existing inextricably in a special context and meaningful only in that individual context, has led these logicians (1) to re-center logic on acceptability away from truth, on participant-determined cogency, on the relativity of varying narratives, and consequently (2) on the formal pragmatics of discourse management or, that is, the rules for *managing* an argumentative discussion, which logicians agree is foundationally dialogical. Abandoning concern with establishing knowledge, say with establishing who

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<sup>1</sup> It is common for logicians to say that 'an argument is valid by virtue of its form alone'. This is at most a half-truth. It is more correct to say that 'an argument is known to be valid by recognizing certain panvalid patterns'. The concern remains to discover what makes an argument valid, and in this connection it is not its form, begging the question what makes it valid. Rather validity is an ontic relationship between propositions, both temporally situated propositions and atemporal propositions. In respect of truth and falsity of propositions, we recognize, in one sense, that a given proposition is true on condition that the state of affairs denoted by the proposition is the case, not that the state of affairs is the case on condition of the proposition being true. The situation is analogous for a valid or invalid argument. In the cases of both propositions and arguments, knowledge of their truth and validity requires reference to an objective ground. Argumentationists have bracketed that objective ground and condemned it to noumenal-being.



is right who wrong in a given controversy, and shifting concern from objectivity to acceptability only admits of treating the forms of practical argumentation.

However, just in their negating the formalism of traditional logic, whose rationalism they believe disregarded the messy content of an argument, they have produced an equally pernicious formalism and are no closer to real arguments. This formalism appears in (1) the form of dialogical or pragma-dialectical rules and (2) a formal moral imperative of duty in Kant's categorical imperative (see below §4). In fact, they have alienated themselves from genuine realizations of justice just in that such realizations require objective knowledge and not merely discourse management. Their negation of absolutism is incomplete and abstract—it has resulted in establishing the nothingness of each discourse in a controversy, save for its pure abstract individuality. The putative affirmation of its being, that is, its thoroughgoing contextual subjectivity, is empty just in its *denial* that the being of the one is identified and mediated through the being of the other as these are thoroughly immersed in *objective social praxis*. It denies the truth of social being/reality, which has now been bracketed. Hegel in his discussion of the moral view of the world in *Phenomenology of Mind* characterizes this interdependence of the identities of the one and the other, here in the case of its incomplete fulfillment.

When thus shut up and confined within itself, however, moral self-consciousness is not yet affirmed and looked at as *consciousness*. The object is immediate knowledge, and being thus permeated purely by the self, is not *object*. But, self-consciousness being essentially mediation and negativity, there is implied in its very conception relation to some otherness; and thus it is *consciousness*. This other, because duty constitutes the sole essential purpose and object of self-consciousness, is a reality completely devoid of significance for self-consciousness. But again because this consciousness is so entirely confined within itself, it takes up towards this otherness a perfectly free and detached attitude; and the existence of this other is, therefore, an existence completely set free from self-consciousness, and in like manner relating itself merely to itself. The freer self-consciousness becomes, the freer also is the negative object of its consciousness. The object is thus a complete world within itself, with an individuality of its own, an independent whole of laws peculiar to itself, as well as an independent procedure and an unfettered active realization of those laws. It is a *nature* in general, a nature whose laws and also whose action belong to itself as a being which is not disturbed about the moral self-consciousness, just as the latter is not troubled about it. (*Ph*, p. 615)

While argumentation theorists have embraced dialogical pragmatics, they have simultaneously rejected the logic of dialectical analysis, especially as this bears on the moral concerns of *recognition* as mutual self-identification through the other, both of which are thoroughly situated in a social ground. The self becomes nothing more, in thought, than an abstract individual not informed by objective social infrastructural relationships. When argumentation theorists exploded the reigning absolutism, they simultaneously atomized discourse narratives infinitely. To state this in an extreme way—the context identity of a discourse consists in its solipsistic being and thus in its nothingness—unmediated individuality is empty, a pure form. It is useful in this connection to cite Hegel's assessment of Kant's project, as it seems to represent an important character of modern philosophy of argument.

The sloth of Reason (Heaven be praised!) considered itself liberated from every call to reflect, and now being saved the trouble of penetrating to its own inward meaning and exploring the depths of Nature and Spirit, it could very well leave itself alone. The further result attending this is the

autocracy of the subjective Reason, which, seeing that it is abstract and without knowledge, has only subjective certainty and not objective truth. The second cause of rejoicing was the concession to freedom of a perfect right, which I can neither understand nor justify, and need not do so; my subjective liberty of conviction and certainty holds good all round. The third cause of joy ... that it amounted even to a crime to seek to know the truth, because the infinite was thereby only rendered finite. (*Lectures iii*, pp. 476-477)

Hegel ends this passage with a reflection that truth is in a bad way when all metaphysics is eliminated and “the only philosophy acknowledged is not a philosophy at all” (*Lectures iii*, p. 477).

To remedy this situation argumentationists have recognized a need to mediate a given discourse by something other than itself and in this way to avoid pernicious relativism. Here they implicitly recognize that otherwise a discourse remains empty and abstract with only the appearance of fullness and individual identity. In this connection, with a turn away from embracing a traditional purpose of argumentation as *establishing truth and objective knowledge* using formal logic *instrumentally* toward *establishing audience adherence*, some argumentation logicians have invoked *the* universal audience. However, considering such an audience to be merely a useful fiction, at best a Kantian regulative principle, they have vacillated between a particular audience and its universal audience with the result that knowledge of the particular remains bracketed as a thing-itself and thus itself forever unknowable. And this unknowability equally applies to the universal audience. They remain in the alienated condition of subjective idealism. And just here injustice can insinuate its pernicious intention to deny the just causes of those disenfranchised, marginalized, or oppressed, whether they are or are not self-aware of their own conditions. Their tack masks an *appropriative alienation* (see below § 4) by means of universalizing their subjective certainty that provides only the illusions of freedom and recognition necessary for a just society.

Below we turn to examine the failure of argumentationists to resolve their relativism by means of (1) constructing the universal audience and, in this connection with a turn to argumentative pragmatics, (2) invoking the pure duty of the categorical imperative.

### 3.2 Invoking the universal audience to address the spectre of relativism

This section shows how some philosophers of argument address the specter of nihilistic relativism by invoking the universal audience or something akin to such an audience. This discussion is principally descriptive, aiming only to provide a synoptic account for our assessment to follow (§ 4).

Trudy Govier (1987) recognizes the need to invoke the universal audience to preserve the normative notion of *good argument*, even to preserve the notion of *reasonableness*. Nevertheless, the literal concept of a universal audience is not viable just in there being no argument “equally intelligible to all *mature adult human beings* at all times and places” as also its content “is embedded in the beliefs and background assumptions of historical context in which it arises” (p. 281; emphasis added). As a useful fiction, even a *kind of regulative ideal* (p. 280), “[t]he notion of a universal audience has an important heuristic use” (p. 281) that allows us “*to broaden our audience as much as possible*” even to include future generations and other cultures, but never escaping particularity (p. 281). Govier affirms that an argument is cogent for an audience

if, *according to standards that audience would deem* on reflection to be relevant, the premises are acceptable and *in the appropriate way* sufficient to support the conclusion. (p. 287; emphasis added)

While this seems to license ‘anything goes’, she believes that her notion of context provides constraints to make correct inferences “according to reasonably endorsed standards.”

We can allow that an argument not cogent in one context might be cogent in another without allowing that whatever people think is cogent is cogent, for them. Moving from acceptability to truth incorporates *only a degree* of audience-relativity. Acceptability is not acceptance: there is no need to reject the distinction between *what is* in fact taken as cogent by an audience and *what* that audience *ought* to take as cogent. Such a distinction can be drawn with the *appropriate sensitivity* to the context in which the argument is presented to the audience, the beliefs of that audience, and the *standards of relevance and rationality in the broader culture* in which the context, the audience, and the argument are based. (pp. 283-284; emphases added)

She believes that she preserves a distinction between what is thought to be and what is to avoid baneful relativism. In this connection, a convincing argument “is *ultimately persuasive for anyone who thinks in the normal way*” (p. 284; emphasis added). Moreover:

To say that an argument is cogent would be to say not that some audience *in fact* has found it convincing, but rather that it *would* be found convincing, *in the long run*, by any audience *relevantly similar* to the audience to whom it was in fact addressed. Such an account can incorporate context and audience relativity without relinquishing the application of norms and dropping the distinction between those arguments which in fact convince people and those arguments which rightly convince people. (pp. 284-285)

Since an argumentation is a dialectical exchange aimed at persuasion, Govier affirms the importance of considering the credibility, trustworthiness, and personal character of the arguer in respect of assessing the force of an argument’s persuasive success—there must be a presumption of the sincerity of participants (p. 278).

Blair & Johnson (1987) discuss the matter in much the same manner, albeit invoking a “community of model interlocutors who hold well-informed beliefs about the subject matter under discussion” (p. 50), that consists in “model ‘ordinary people’, namely those in possession of high critical standards,” “outstanding exemplars” but not gods (p. 52), that premise acceptability is adjudicated by “the pertinent community of ideal interlocutors” (p. 53). Again, “an absolute precondition of this practice is the assumption of good will: that people giving children treats will do just that” (Johnson 2000, p. 212).

Christopher Tindale (1999) holds that “the universal audience *somehow* lying within, or framed by, or participating in, that particular audience” (p. 86; emphasis added) *is constructed* “as an imagined tool” in such a way as to guard against arbitrary manipulation as a kind of regulative principle. Thus, an agreement of the universal audience *can fix one meaning as its core* (p. 87). In combating the absolutist notion of universal audiences, he invokes the modified “privileged audience” that is able “to consider concrete issues addressed in arguments directed *across times and cultures*” (p. 88; emphasis added). A universal audience “*is a mental construct of the arguer*” (p. 93;

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emphasis added). Now, while there will be as many definitions of reasonableness as there are arguers, somehow the universal audience will be constructed in such a way as to mediate or screen out bad reasoning because its role is “to reject bad reasoning in any case in which an appeal is made to it” (p. 96). “The universal audience is the universalization of the particular *in its context*” (p. 101).

Thus there is an important connection between the immediate, particular audience and the universal model drawn from it. Perelman begins with a particular audience and then looks at *its* universal features. Constructing these universal audiences involves defending one’s conception of universality. The philosopher addresses the universal audience as he or she conceives it. (p. 89)

Tindale continues.

Perelman likens this universalizing to that of *Kant’s categorical imperative*, and not to the general will of Rousseau’s small political community ... The philosopher attempts to universalize the specific features of the situation and solicits general agreement for them in this way. *Only arguments that can be universally admitted are judged reasonable*. This does not preclude arguments about what constitutes the universal audience for a specific case. ... Here agreement on the universal audience must be achieved through dialogue before the stage of appealing to that audience. (p. 89; emphasis added)

We next learn that the universal audience is not an abstraction but “a populated community [deriving] from its conceiver, conditioned by her or his milieu,” that it is

a concrete audience that changes with time and with the speaker’s conception of it [...] It is far from being a transcendental concept borne out of a rationalism. But although the universal audience will change, the test of universality goes on — *it* transcends a milieu or a given epoch. (p. 89)

We find, then, that there are as many universal audiences as there are particular audiences from which they arise. But this is just to assert the plurality of particular audiences.

[U]niversal audiences can be constructed from particular ones by *universalizing techniques* that *imaginatively* expand audiences *across cultures and time* and apply notions like competence and rationality. What results is an audience that can assent to concrete propositions and not simply formal proofs and empty platitudes. [...] The universal is *fully grounded* in the practical requirements of the real. (p. 90; emphasis added)

And one of these universalizing techniques is employing the categorical imperative. Continuing:

So the universal audience [...] is the *distillation of the concrete audience*, comprised of the common features as imagined by the arguer (speaker [philosopher?]). For an argument to be strong it should elicit the agreement of this universal audience, insofar as the arguer determines it. Put another way, a convincing argument is one whose premises are universalizable. (90; emphasis added)

Tindale throughout sees no particular audience as an instantiation of the universal platonic audience, while intending that the standard of reasonableness is not arbitrary and relative but distinguishes between *the* standard of reasonableness in the model and the individual applications of that standard—

The standard of the universal audience as a standard of reasonableness will be invoked in different ways for different audiences in different contexts. But the exercise of universalizing and basing judgments of acceptability on the universalization remains the same. (p. 96)

In constructing the universal audience for an argument, we do not give up effectiveness. On the other hand, the universal audience, as a *representation of reasonableness in the context*, cannot value effectiveness over reasonableness. In this way manipulation is ruled out. [...] Members of the particular audience still retain their perspectives and prejudices, *but they do not let them rule what they realize is reasonable*. Rather, they distance themselves from their own prejudices in judging their universal elements. (pp. 117-118; emphasis added)

Yet, without an objective standard of reasonableness, effectiveness, as grounded on adherence, has full rein. Tindale continues:

A key test in this is whether something can be universalized without contradiction. If it cannot, it must be rejected (or not included in the argumentation). Fallacies count as contradictions of this sort, recognized as such by the reasonable element *within* audiences. The passions of the racist also fall into this category of contradictory elements. Of course, the racist himself, as well as most of his audience, may not recognize this, *but the evaluator will*, and now he has a clear *reason* for why such statements should be rejected. (p. 118; emphasis added)

Tindale affirms that the universal audience is not a community of experts imposed into the argumentation to adjudicate it from the outside—“rather, we are addressing the reasonableness of real people, able to distance themselves and to see beyond their perspectives” (p. 118). In constructing a universal audience from a particular audience, someone

bracket[s] out all of the features of an audience that attach to its particularity to try to *reduce* it to the common elements that unify its members. Alternatively, one can adopt the technique of identifying the ‘highest’ or most reasonable elements with the audience, excluding those that are *clearly unreasonable*. (p. 118; emphasis added)

Tindale notes that “a further technique is to imagine the audience distributed across time” (p. 119), but not, putatively, *sub specie aeternitatis*. Still, Tindale’s universal audience exercises the categorical imperative.

#### 4. A PHILOSOPHIC DIAGNOSIS—SOME METALOGICAL ANALYSIS

This section aims to provide an initial assessment of philosophy of argument in connection with some salient features presented by references to the universal audience in answering the appearance of nihilistic relativism. We believe in this connection that it is illuminating to consult Hegel’s discussion of dissemblance in *Phenomenology of Mind*. We also apply a discussion by Mitchell Franklin on *appropriative alienation* (1973). In each case we are concerned to draw attention to the content of their discussions as also to apply the formal methodology of their analyses. Both philosophers are astutely sensitive to how appropriative alienation is masked by means of shifting, by dissemblance, to present an illusion of universal and objective morality and justice which is, in truth, particularistic and which thereby sanctions the oppressive hegemony of the prevailing ruling interest.

*On the vacillation in discussions of a universal audience.* Once cogency, expressed as reasonableness, is relativized to what is acceptable to a given audience's standard, philosophers of argument have inescapably vacillated between (1) fixing an internal, emergent standard while recognizing the need for an objective standard and then (2) immediately encountering and recoiling from its becoming an external, imposed standard. Consequently, all meaningful distinctions between *is and ought*, *being and thinking*, *knowledge and belief*, *reality and appearance*, *the necessary and the contingent* become conflated and empty and genuine mediation becomes entirely eclipsed save for an exercise of good will. Argumentations are astutely aware of this matter, as well they ought to be just in their desire to empower the disenfranchised and marginalized and to promote the causes of justice in their behalf. However, justice will remain elusive and be subordinated to pragmatic utility, frustrated by continually encountering only subjective certainty and the nothingness of both extremes—the particular audience and the universal audience repel one another and each falls away as an empty abstraction. In this connection, the whole of knowledge or possible knowledge remains entirely suspended within subjectivity, leaving aside any access to the knowability of the external object, the other—whether in the form of another person, *the* universal audience, or the objective material and practical social ground. Invoking the universal audience that is not informed by objective reality can provide no material foundation for a satisfactory resolution of conflicts and the promotion of justice.

Hegel's discussion of dissemblance in connection with the moral attitude in his *Phenomenology of Mind* is especially helpful in respect of illuminating the *formal nature* of this vacillation, if not of the content of the problem we are discussing. There he remarks that the *moral attitude* is contradictory in respect of (1) its consciously producing the object to be itself through its active subjectivity and (2) its recognizing for its own validation the necessity of this object to be outside itself, the other, but then having immediately to deny its independence. Hegel refers to this as a vertiginous fraudulent process.

The moral attitude is, therefore, in fact nothing else than the developed expression of this fundamental contradiction in its various aspects. It is—to use a Kantian phrase which is here most appropriate—a “perfect nest” of thoughtless contradictions. Consciousness, in developing this situation, proceeds by fixing definitely one moment, passing thence immediately over to another and doing away with the first. But, as soon as it has now set up this second moment, it also “shifts” this again, and really makes the opposite the essential element. At the same time, it is conscious of its contradiction and of its shuffling, for it passes from one moment, immediately in its relation to this very moment, right over to the opposite. Because a moment has for it no reality at all, it *affirms* that very moment as real: or, what comes to the same thing, in order to assert one moment as *per se* existent, it asserts the opposite as the *per se* existent. It thereby confesses that, as a matter of fact, it is in earnest about neither of them. (*Ph*, pp. 629-630)

Working through how argumentationists address the problem of nihilistic relativism, we continually encounter a vacillation between the universal audience being transcendent and not being transcendent, between its being concrete and populated yet rising above a given milieu, between being *an* audience and *the* audience, between fixing an argument and its continually changing, between standards that are objective and those that are embedded in a particular context. Again, since the universal audience is informed only by

subjective certainty, it can never achieve genuine independence and thus it can never become adequately objective in its mediations. Perhaps it is too harsh to refer to this situation as *bad faith*; Hegel remarks that it ends in *hypocrisy*. Nevertheless, the fear is that this shifting gives license to, or *masks*, the hegemony of the prevailing ruling authority in the larger social context in which exist profound controversies that call for justice and an *objectification of injustice*.

*The project before argumentation theorists*, then, is to demonstrate how the universal audience arises from within a particular audience while simultaneously not itself becoming just another particular audience—after all, ‘whose universal audience?’ They need to succeed in this project in order to overcome their own alienation and to establish/recognize the objective reality of the multiplicity of argumentative discourses and in this process distinguish those that promote justice from those that promote injustice. However, they fail in this project—this failure had already been prefigured by Perelman.

Now, argument addressed to a universal audience, which is construed to include “all normal, adult persons” (1969, p. 30), aims to “convince the reader that the reasons adduced are of a compelling character, that they are self-evident, and possess an absolute and timeless validity, independent of logical or historical contingencies” (p. 32), which just is the philosophical ideal “employing nothing but logical proof” (p. 32). The highest point of acceptance, adherence, or approval “is reached when there is *agreement of the universal audience*” (p. 31). But holding out for some universal truth is pointless, since a universal truth is a fiction (p. 46). Indeed, “[t]he *agreement of a universal audience is thus a matter, not of fact [or truth], but of right*” (p. 31). There is no objective standard for distinguishing between true and false self-evidence, since “[e]ach individual, each culture, has its own conception of the universal audience [...] [and] men, at different times in history, have [differently] regarded [what is] *real, true, and objectively valid*” (p. 33)—witness the ease with which it is possible to argue efficaciously to opposite conclusions (p. 46). “Objectivity, as it relates to argumentation, must be reconsidered and reinterpreted if it is to have meaning in a conception that does not allow the separation of an assertion from the person who makes it” (p. 59).<sup>2</sup>

Thus, Perelman affirms that there is no universal audience that might serve as a genuine norm; and, thus, the model of Cartesian rationalism fails in providing incontestable truths or facts, since, every fact “loses its [objective] status as soon as it is no longer used as a possible starting point, but as the conclusion of an argumentation.” And what holds for facts holds also for truths—“[e]verything just said about *facts* is equally applicable to what are called *truths*” (p. 68). But he does embrace Kant ... as do his adherents.

In connection with constructing the universal audience, when we turn attention to the manner in which philosophers of argument characterize the *content* of the universal audience, we find an array of expressions that do not provide confidence in its efficacy to mediate difference and ameliorate conflict to achieve material justice and not merely to apply pragmatic disputation rules. The following is a gloss of various treatments of this matter (drawn from §3.2 above).

The universal audience somehow lying within a particular audience is constructed from the mind of the arguer as an imagined tool or regulative principle with heuristic ends. Somehow it is the universalization of the particular in its context. By certain universalizing techniques, emerging

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<sup>2</sup> The passage cites, and glosses, the text of Perelman & Olbrechts-Tyteca 1969.

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from standards that an audience would deem on reflection to be relevant—in the appropriate way sufficient to support the conclusion; drawn with the appropriate sensitivity; standards of relevance and rationality in the broader culture; ultimately persuasive for anyone who thinks in the normal way; in the long run, by any audience relevantly similar to the audience—the participants aim to broaden the audience as much as possible in order to transcend a milieu or a given epoch. These participants are model ‘ordinary people’, namely those in possession of high critical standards, outstanding exemplars but not gods. Premise acceptability is adjudicated by the pertinent community of ideal interlocutors and only arguments that can be universally admitted are judged reasonable. The universal is fully grounded in the practical requirements of the real just in its being the distillation of the concrete audience. Only premises are admitted that are universalizable, that is, not contradictory.

Tindale, while valuing reasonableness over effectiveness, has aptly remarked in a poignant observation that “of course, the racist himself, as well as most of his audience, may not recognize this, *but the evaluator will*, and now he has a clear *reason* for why such statements should be rejected” (1999). And, of course, this is just the problem *not overcome* with these attempts at constructing a universal audience in the contemporary tradition of philosophy of argument whose subjective idealism has instantiated the nothingness of the multitude of argumentative discourses and bracketed the objective infrastructural social ground for genuine mediation, the outcome of which is to sanction the prevailing social injustices.

As it happens, this evaluator, who is supposed to recognize the prejudice/contradiction, must in fact be external to the particular community to be meaningful or it will lose its objective content. For how can such an evaluator arise from a given community composed of such a contrary milieu of sets of beliefs and not collapse back into that community? These *real people* able to distance themselves from their long cherished prejudices must really be *ideal people* sufficiently able to bracket their own subjective context. But what then becomes their vantage point for success in this project? Universality, then, continually converts to particularity, and we are none the closer to answering the racist. We are assured that, while the racist misses the point, the non-omniscient evaluator catches it ... because, armed with the method of categorical thinking, “he has a clear *reason* for why such statements should be rejected” — to wit, these statements are self-contradictory or inconsistent. And here we ineluctably meet old Kant’s categorical imperative of practical reason, the *formal principle of abstract duty*. Hegel has the following remarks in his *Lectures on the History of Philosophy* about such a predicament.

While the highest pinnacle of the theoretic Reason is abstract identity, because it can furnish only a canon, a rule for abstract classifications, practical Reason, as law-giving, is immediately regarded as concrete; the law which it gives to itself is the moral law. But even if it is stated that it is concrete in itself, there is the further consideration that this freedom is at first only the negative of everything else; no bond, nothing external, lays me under an obligation. It is to this extent indeterminate; it is the identity of the will with itself, its at-homeness with itself. But what is the content of this law? Here we at once come back to the lack of content. For the sole form of this principle is nothing more or less than agreement with itself, universality; the formal principle of legislation in this internal solitude comes to no determination, or this is abstraction only. The universal, the non-contradiction of self, is without content, something which comes to be reality in the practical sphere just as little as in the theoretical. The universal moral law Kant therefore expresses [is the categorical imperative]. (*Lectures* iii, pp. 459-460)



The universal audience is an empty abstraction, and by itself, then, lends no help toward rectifying any injustice, let alone promoting a deeper culture of justice. Still, the situation begs for resolution, strives for some objective norm of mediation. And in this connection, philosophy of argument becomes a manifestation of Kantian deontological ethic, to which we now turn.

*Imposing a Kantian resolution to the antinomies.* Perhaps it is not surprising that philosophers of argument often invoke Kant's categorical imperative as a *regulative* principle; after all, their thinking is forced to move from pure subjectivity and its relativism while simultaneously resisting an external authority. A regulative principle would seem not to violate their intention. However, since Kant's moral imperative eschews any empiric conditionality, any contextuality, this tack subverts the very essence of an argument as they understand it. And thus, we are no closer to understanding how a — or *the* — universal audience arises from the particular to become, moreover, efficacious in an agreeable fashion.

Hegel's discussion of the pure formalism of the categorical imperative is especially pertinent in making sense of this current within philosophy of argument as is Mitchell Franklin's discussion of appropriative alienation in connection with his critique of phenomenology's influence on legal theory. Franklin has remarked that in his discussion of law, whether moral or legal, Hegel "perceives the rule of law as an untrue appearance which masks the truth of arbitrariness and the truth that arbitrariness is directed against historical necessity through the power of the jurist, himself alienated, over the contradiction or Kantian antinomy" (Franklin 1973, p. 491). In this connection Hegel in *Phenomenology of Mind* writes the following.

Moral self-consciousness sets up its purpose as pure purpose, as independent of inclinations and impulses, so that this bare purpose has abolished within itself the ends of sensibility. But this cancelling of the element of sense is no sooner set up that it is again dissembled. The moral consciousness acts, it brings its purpose into reality; and self-conscious sensibility, which should be done away with, is precisely the mediating element between pure consciousness and reality—is the instrument used by the former for the realization of itself, or is the organ, and what is called impulse, inclination. It is thus not really in earnest in cancelling inclinations and impulses, for these are just self-consciousness making itself actual. Moreover, they ought not to be suppressed, but merely to be in conformity with reason. (*Ph*, p. 633-634)

We can recognize *sensibility* here to be the putative concreteness of an argument according to philosophers of argument; but we can also recognize the vacillation here as the analog of argumentationists wrestling with constructing the universal audience to ameliorate the specter of relativism and the nothingness of pure, unmediated subjectivity. Hegel continues:

Morality is both the activity of this pure purpose, and at the same time the consciousness of rising above sensibility, of being mixed up with sensibility and of opposing and struggling with it. That this moral completion is not taken seriously is directly expressed by consciousness itself in the fact that it shifts this completion away from infinity, i.e. asserts that the completion is never completed. (*Ph*, p. 635)

And thus it must erect some principle that can appear to mediate in an objective manner—"Morality itself thus exists in another being than the actual concrete

consciousness. This other is a *holy moral legislator*” (*Ph*, p. 637). Kant’s holy moral legislator is Descartes’ god-assistant, Leibniz’s holy watchmaker, and the Enlightenment’s unhistoric prince. Kant’s holy moral legislator has the appearance of being unhistorical and non-arbitrary, but in its abstract independence as pure duty it actually masks its historical particularistic and arbitrary interest. Its universality is inauthentic and purely formal, or, rather, its appearance of universality masks its appropriative intention. Mediation turns out to be vested in an external judge and thus open to the discretion of his arbitrary will. Who, then, becomes that judge?

For moral self-consciousness is to itself the absolute, and duty is simply and solely what it knows to be duty. It, however, knows only pure duty as duty: what is not sacred in its view is not *per se* sacred at all, and what is not *per se* sacred cannot be rendered so by the being that is sacred. Moral consciousness, further, is not really serious in allowing something to be made sacred by another consciousness than its own. For, only that is without qualification sacred in its eyes which is made sacred through its own action, and is sacred within it. It is thus just as little in earnest in treating this other being as a holy being; for this would mean that, within that holy being something was to attain an essential significance, which, for the moral consciousness, i.e. in itself, has none.

If the sacred being was postulated, in order that duty might have binding validity within the moral consciousness, not *qua* pure duty, but as a plurality of specific duties, then this must again be dissembled and this other being must be solely sacred in so far as only pure duty has binding validity within it. Pure duty has also, in point of fact, binding validity only in another being, not in the moral consciousness. Although, within the latter, pure morality seems alone to hold good, still this must be put in another form, for it is, at the same time, a natural consciousness. Morality is, in it, affected and conditioned by sensibility, and thus is not something substantial, but a contingent result of free will; in it, however, *qua* pure will, morality is a contingency of knowledge. Taken by itself, therefore, morality is in another being, is self-complete only in another reality than the actual moral consciousness. (*Ph*, p. 637-638)

Hegel characterized the condition of this moral attitude upon finding itself in this predicament —“It knows its morality as incomplete because it is affected by an opposing sensibility and nature, which partly perturb morality as such, and partly give rise to a plurality of duties, by which, in concrete cases of real action, consciousness finds itself embarrassed” (*Ph*, p. 639).

Thus, this vacillating between the ideal and the material, between the universal audience and the particular audience, leaves vulnerable those lacking power because their interests will be appropriated by the rival power already vested in the state or a prevailing authority, often legitimating itself through religious ideas. Franklin does not mince words in his critique of phenomenological philosophy of law in its masking particularistic bourgeois interests as universal interests.

Throughout the history of Neo-Kantianism and its problems [phenomenology], the idea in philosophy of law has been to assert that interpretation is free of infrastructural influence and yet to preserve and to mask the activist ambiguity, hypocrisy, equivocation, *Verstellung*, or *déplacement* which bourgeois social relations require, because the bourgeoisie is not the universal class which the Enlightenment claimed it was. (1973, p. 537; cf. p. 515)

Franklin relies heavily upon Hegel’s discussion of dissemblance as also on his Marxist notion of class conflict. The bracketing of the objective social world by promoting the independence, that is, the context immediacy, of each argumentative discourse leaves those lacking power subject to the arbitrary will of those in power. Moreover, the

objectivity of the social world must be examined and understood as itself resting in the infrastructural relations of production and control of the means of human existence (cf. Hegel's discussion of lordship and bondage in *Phenomenology of Mind* and Marx's discussion of estrangement of labor in *MSS of 1844*).

If there is bracketing of the social world, impure bourgeois alienation-intentionality, reflecting the struggles outside the bracketing, that is, within the infrastructure, in truth determines the fate of the analogy within the bracket, unless the struggling forces within the infrastructure are no longer completely alienated by the bourgeois force, which may be weak or weakened by the course of the history of the infrastructure. (1973, p. 523)

The outcome of this vacillation consists in its masking and justifying "the hegemony and the arbitrariness in the legal superstructure of the bracketed social hegemony which obtains in the infrastructure" (1973, p. 524). Franklin remarks on appropriate alienation in the following ways:

Alienation means seizure, appropriation, *occupatio* by the other subject of law with the semblance of consent of the appropriated subject of law. The outcome of this criticism of phenomenological philosophy of law is that the bourgeois rule of law is the rule of bourgeois appropriation or alienation. [...] If Husserl's "bracketing" ruptures, severs, or deactualizes the unity of opposites, the material, empirical world and its essence as history, the unity cannot be restored internally. As has been said, an external or unhistorical mediating force is then dissembled and introduced to dominate or to rule the antinomy. This is the permanent problem and solution of undialectical thought, of thought which does not acknowledge interpenetration of self-moving opposition [and thus invokes the unhistorical prince or external mediator]. (1973, p. 470)

Thus, applying the analyses of dissemblance by Hegel on the moral attitude and by Franklin on phenomenological philosophy of law to examining attempts by philosophers of argument to dispel the specter of relativism, we find them failing to avoid external mediation when then invoke the universal audience. Instead, they resurrect Kant's subjective idealism and bracket as unknowable the very social ground they require to promote internal mediation toward effecting a genuine culture of justice.

## 5. CONCLUDING REMARKS—WHITHER THE ARGUMENTATION MOVEMENT

Our discussion has aimed to bring to light a deeper analysis of the problem of pernicious relativism running through philosophy of argument when a good argument is evaluated according to criteria set by the purpose of establishing audience adherence. We take philosophers of argument to embrace sincere concerns for promoting justice, indeed, to be conscientious human beings, genuine in their affirmation of human agency and their concerns about democracy and human empowerment. Our criticism of this trend in argumentation theory intends to complement their concern, just in their desire to overcome the specter of relativism.

Our fear, nevertheless, is that this trend in philosophy of argument will issue in a new fideism. This direction cannot be productive of promoting justice and eliminating injustice, just in its surrender of reason and genuine human agency. Our concern is not to diminish the importance of argumentative dynamics, even of the importance of audience adherence. Rather our concern asks that we objectify the limitations of this direction to recognize its own tendency toward formalism and, consequently, its own compromise of

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genuine justice by instantiating an arbitrary external mediator, namely, the prevailing ruling authority that is thoroughly embedded in the social infrastructure. Unless we argumentationists are prepared to unmask our own complicity in current unjust practices by unbracketing the social world and reintroducing truth and falsity, we will persist to sanction the very system of oppression we morally condemn. Thus, not only in suspending concerns with truth is there an eclipse of justice, but also by rejecting the dialectical principle that truth is contained in otherness, that of the other in the forms of person and social ground. In this sense we need to embrace the analytic method of dialectical logic that works with a notion of the unity of the identity and difference of opposites.

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